

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EHONG ESTEBAN SIU,

Petitioner,

V.

UNITED STATES OF AMERICA,

Respondent.

Case No. C08-1407-JCC
CR02-0192-JCC

ORDER DENYING APPLICATION FOR
CERTIFICATE OF APPEALABILITY

This matter comes before the Court on Petitioner's Notice of Appeal (Dkt. No. 27), the Court has construed as an application for a Certificate of Appealability (*see* Dkt. No. 28); the Government's Response (Dkt. No. 31); and Petitioner's Reply (Dkt. No. 32). The Court hereby DENIES Petitioner's application for the reasons stated herein.

“A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). A certificate should issue where the prisoner shows that jurists of reason would find it debatable whether the petition states a valid claim as to the denial of a constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 478 (2000); *see also Miller El v. Cockrell*, 537 U.S. 322 (2003).

The Court dismissed Petitioner's 28 U.S.C. § 2255 Motion to Vacate, Set Aside, or Correct Sentence (Dkt. No. 1) because Petitioner had failed to raise any plausible challenge to

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1 his conviction for money laundering under 18 U.S.C. § 1956(a)(2)(A). Neither of the two cases
2 upon which he relied, *United States v. Santos*, 128 S. Ct. 2020 (2008), and *Cuellar v. United*
3 *States*, 128 S. Ct. 1994 (2008), concerned that provision of the money laundering statute, so
4 they have no bearing on his conviction. (See Order 2 (Dkt. No. 24).)

5 The Court explained that *Santos*, which interpreted the term “proceeds of some form of
6 unlawful activity” to mean the “profits” of that unlawful activity, 128 S. Ct. at 2025, does not
7 apply to § 1956(a)(2)(A) because that money laundering provision is not limited to unlawful
8 proceeds. (See Order 2 (Dkt. No. 24).) In his Reply, Petitioner suggests for the first time that a
9 reasonable jurist could interpret the term “funds” in § 1956(a)(2)(A) to mean unlawful
10 “proceeds,” thereby invoking the rule in *Santos*. (See Dkt. No. 31 at 1.) Petitioner’s reading is
11 implausible. Indeed, a different money laundering provision makes clear that unlawful
12 “proceeds” refers only to a specific subset of “funds,” so the terms are not synonymous. See 18
13 U.S.C. § 1956(a)(2)(B) (applying only when one “know[s] that the . . . funds . . . represent the
14 proceeds of form of unlawful activity . . .”). No reasonable jurist could conclude that the
15 *Santos* holding applied to § 1956(a)(2)(A). See 128 S. Ct. at 2023.¹

16 The holding in *Cuellar* is similarly inapplicable to Petitioner’s conviction under
17 § 1956(a)(2)(A). *Cuellar* concerned money laundering convictions under § 1956(a)(2)(B)(i),
18 which prohibits the transportation of unlawful proceeds “knowing that such transportation
19 . . . is designed in whole or in part . . . to conceal or disguise the nature, the location, the
20 source, the ownership, or the control” of those proceeds. The Court held that “[t]he statutory
21 text makes clear . . . that a conviction under this provision requires proof that the purpose—not
22 merely effect—of the transportation was to conceal or disguise a listed attribute.” *Cuellar*, 128

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¹ Petitioner also argues that it is debatable whether the *Santos* holding applies broadly to all unlawful
activities or only to those involving illegal gambling. (See Reply 2 (Dkt. No. 32).) This debate is irrelevant to the
case at hand, however, because *even if it applies broadly to all illegal activities*, the *Santos* holding has no bearing
on Petitioner’s conviction under § 1956(a)(2)(A), as that money laundering provision is not limited to unlawful
“proceeds.” (See Order 2 (Dkt. No. 24).)

1 S. Ct. at 2005. As is obvious from the preceding quotation, the Court's holding was explicitly
2 limited to "conviction[s] under this provision." *Id.* Accordingly, no reasonable jurist could
3 conclude that *Cuellar* had any effect on money laundering convictions under § 1956(a)(2)(A),
4 notwithstanding Petitioner's argument that both provisions involve "transportation." (See Mot.
5 1 (Dkt. No. 32).)

6 In conclusion, no reasonable jurist could find that either *Santos* or *Cuellar* affected
7 Petitioner's money laundering conviction under § 1956(a)(2)(A). Accordingly, Petitioner is not
8 entitled to a Certificate of Appealability, and his application is DENIED.

9 DATED this 11th day of August, 2009.

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JOHN C. COUGHENOUR
United States District Judge